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1 Cimalore - rough draft
2 MR. FOX: I want to confirm with
3 Mr. Hogan that the -- UAW's counsel, Babette
4 Ceccotti had contacted me last night asking
5 us to provide Cohen, Weiss and Simon with a
6 copy of the unredacted version of
7 Wilmington Trust's objection filed yesterday,
8 which is June 27. I told him I would be
9 happy to do that if it was acceptable to
10 debtors' counsel, so if you would just
11 confirm that that's acceptable, I'll be happy
12 too give it to Cohen, Weiss and Simon's
13 counsel today.

14 MR. HOGAN: Sure. I actually was
15 informed of that, and sent an e-mail last
16 night, and indicated on the representation
17 that UAW agreed to be bound by the same
18 confidentiality protections that apply to
19 confidential and highly confidential
20 material, I think as it pertains to the 1113
21 motion, or any other motion that they signed
22 off on, I'm fine with it.

23 MR. HOCK: I believe Babette responded
24 that that was acceptable.

25 MR. HOGAN: She did. So we're all on

2

1 Cimalore - rough draft
2 the same page.
3 STEVEN CIMALORE,
4 called as a witness, having been first

062806.txt

5 duly sworn by Jeffrey Benz, a Notary
6 Public within and for the State of New
7 York, was examined and testified as
8 follows:

9 EXAMINATION BY MR. HOGAN:

10 Q. Good morning, sir. Could you please
11 state and spell your name for the record?

12 A. Miami is Steven Cimalore. Steven with a
13 v, Cimalore is C-I-M-A-L-O-R-E.

14 Q. And Mr. Cimalore, do you understand that
15 you're here today pursuant to a deposition notice
16 directed to Wilmington Trust company?

17 A. Yes.

18 Q. Have you ever had your deposition taken
19 before?

20 A. Yes.

21 Q. How many times?

22 A. Once, I think.

23 Q. Okay. Just -- some quick background
24 rules. The basics here are, I'm going to ask
25 questions, and you're going to provide information

3

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2 and answers, so if any of my questions are
3 unclear, please let me know, and I'll clarify
4 them. Throughout the day your counsel may object
5 to questions, unless your counsel instructs you
6 not to answer a particular question, I'm going to
7 ask you to go ahead and answer it, and you will
8 be obligated to do so, is that fair?

9 A. Fair.

10 Q. And another one, because the
 Page 2

062806.txt

11 stenographer is taking down what we say here, it's
12 important to try to give audible answers, and it's
13 important that we not try to take over each other.

14 A. Okay.

15 Q. If you wanted to take a break any time,
16 let me know.

17 A. Fair.

18 MR. FOX: Before you begin, I just want
19 to put on the record that we had a
20 conversation with chambers yesterday, and I
21 just wanted to medication clear that pursuant
22 to the judge's instruction that the discovery
23 is limited to factual allegations supporting
24 Wilmington's basis for objecting to the
25 attrition motion which is on for a hearing

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2 tomorrow. And the other thing that I just
3 want to point out is that in order to help
4 you get answers, substantive answers, I just
5 want to point out that you're going to need
6 to establish the basis of the witness's
7 information, because witness is going to have
8 to information based on the fact that
9 Wilmington Trust is a member of the unsecured
10 creditors committee, and we've already agreed
11 that this deposition is -- that in this
12 discovery, it is based on Wilmington Trust's
13 individual capacity not as a committee
14 member, and they be secondly, so the witness
15 is not going to testify with respect to

062806.txt

16 knowledge that he has as a committee member,
17 and secondly, the witness is not going to be
18 able to testify as to information that's
19 gained in the course of communications with
20 his counsel, due to the privilege.

21 So like I said, in order to assist you,
22 in getting the best answers you can, rather
23 than privilege objections, I'm going to ask
24 you to try to establish a real foundation for
25 the witness's knowledge, because otherwise

5

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2 you're going to run into that roadblock, and
3 I don't want to belabor the process.
4 MR. HOGAN: Okay. We certainly did have
5 a conversation with chambers yesterday, and
6 obviously, we intend to limit the deposition
7 to the subject matter that the court has
8 indicated is proper. With respect to your --
9 Mr. Fox, your comment that the witness is not
10 going to testify in terms of knowledge
11 learned, on behalf of Wilmington's
12 membership, on the creditor's committee, I
13 don't know that we agreed to anything like
14 that, and I don't know how I can -- or the
15 witness, for that matter, can segregate those
16 things in his mind. What we discussed
17 yesterday was in terms of discovery requests,
18 we -- we didn't want to see information
19 produced to us that was produced to
20 Wilmington by virtue of their membership on
21 the committee. So I'll try and explore where

062806.txt

22 bases of information come from, but I'm not
23 agreeing to limit the deposition in terms of
24 where the witness's, or Wilmington's source
25 of knowledge, in terms of facts, related to

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2 the motion, came from.

3 MR. FOX: Well, I -- okay. I mean, I
4 just amplify in terms of the committee aspect
5 of it, again, I think Wilmington's here in
6 its individual capacity, and to the extent
7 that it does have information as committee
8 member it's primarily gained through counsel
9 or committee professionals, so it's going to
10 be privilege or work product, or prepared in
11 the context of or in preparation for
12 litigation. So --

13 MR. HOGAN: Privileged stuff, I
14 understand completely.

15 MR. FOX: So I just -- you know I'm just
16 trying to be helpful to you, so we don't
17 belabor this.

18 Q. So Mr. Cimalore, do you -- other than
19 conversations and communications with your
20 counsel, which are privileged, and we'll into some
21 specific questions on that, but I won't ask for
22 the substance of those, this your mind, as you sit
23 here, are you thinking about answering your
24 questions one way or the other dimension on
25 Wilmington's independent role or is their role as a

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062806.txt

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2 member of the creditors committee? Can you make
3 that distinction in your mind?
4 A. It depends on the question. Yeah, I --
5 Q. Is there any subject matter or anything
6 that you're thinking about, that you had in mind
7 as we head into the dep that you would answer
8 differently, or you wouldn't be able to answer
9 solely in Wilmington's individual capacity?
10 MR. FOX: Maybe it would be better to
11 just hold that till you get to specific
12 questions, and if he feels that way, he will
13 tell you at the time.
14 Q. Do you feel that way now? Is there any
15 subject matter where you're going to have
16 problems, based on the admonition of your counsel?
17 A. Like I said, depends on what you ask, I
18 guess.
19 Q. But as you sit here Indiana, you don't
20 have any subject matter in mind, where it would be
21 a problem in terms of Wilmington's individual as
22 opposed to capacity as a creditor committee.
23 A. No.
24 Q. You're employed by Wilmington Trust
25 company?

8

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2 A. That's correct.
3 Q. What is your position, sir?
4 A. I'm a vice president, and I'm a section
5 manager of the bankruptcy group.
6 Q. And are you employed by any other entity

062806.txt

7 or company?
8 A. No.
9 Q. Are you a member of a board of directors
10 of any organization?
11 A. No.
12 Q. How long have you been employed by
13 Wilmington Trust company?
14 A. Five and a half years.
15 You know what? Let me clarify one thing
16 by used to be on the boarded -- I have a cousin
17 who has fashion -- I want to make sure, because I
18 don't know if I'm still on or not, to be honest
19 with you, she is an interior designer in Houston,
20 Texas, and I was on her board at one time, to so
21 just to be clear, I don't know if I'm still on
22 that. Just to be clear. That's the only other.
23 Q. What is your business address?
24 A. It is -- you know what? We're in a
25 different location than our address, so if I could

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2 just check my card. You can't mail to where our
3 building is, but our mailing address would be 1100
4 north market street, Wilmington Trust, Delaware,
5 19890.
6 Q. And what do do you as a section manager
7 of the bankruptcy group at Wilmington Trust?
8 A. Basically, handle certain types of
9 accounts has it have gone into default, or Chapter
10 11, serve on committees, and I also manage a group
11 of five people. Six including myself.

062806.txt

12 Q. Do you -- do you handle the account
13 related to the Delphi estates?

14 A. Yes.

15 Q. When did you begin handling the account
16 related to the Delphi estates?

17 A. We became successor trustee for Chase
18 around the time of the filing. And then we were
19 appointed it the committee, I believe it was fine
20 days after filing.

21 Q. Have you been involved in the management
22 of the Delphi account, since Wilmington Trust was
23 appointed successor trustee?

24 A. Yes.

25 Q. What have you done to prepare for this

10

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2 deposition today?

3 A. Met with my counsel.

4 Q. Anything else?

5 A. Reviewed all the -- the draft -- the
6 objection.

7 Q. Anything else?

8 A. And basically reviewed your request.
9 That was it.

10 Q. Did you have any conversations with
11 anyone else at Wilmington Trust?

12 A. Just my direct report that I was doing a
13 deposition.

14 Q. Okay. So you didn't discuss the
15 substance of Wilmington's management of the Delphi
16 account?

17 A. No.

062806.txt

18 Q. Just to be clear, other than with your
19 counsel, have you had discussions with anyone in
20 preparation for this deposition?

21 A. No.

22 Q. Other than the objections, have you
23 reviewed any documents, in preparation for your
24 deposition?

25 A. No.

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2 Q. Are you familiar with the -- the
3 indentures, under which Wilmington Trust serves as
4 the indenture trustee with respect to certain
5 Delphi debt?

6 MR. FOX: Let me just clarify, there's
7 only a single indenture.

8 Q. Are you familiar with the indenture
9 under which Wilmington Trust serve as indenture
10 trustee with respect to certain Delphi debt?

11 A. Somewhat. I mean, I am, but I may
12 not -- verbatim right here, yes.

13 Q. Is that the indenture that was put in
14 place when Wilmington Trust became the successor
15 trustee?

16 A. Yes.

17 MR. FOX: Depending, let me clarify, it
18 was not put in place -- the indenture was in
19 place, when the bonds were issued, which I
20 think was 1999. That continues to be the
21 same indenture. Wilmington became the
22 successor trustee, even August or

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23 September 2005, to J.P. Morgan Chase when
24 they resigned. (tape)
25 Q. Correct. Just to get back to your

12

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2 initial, when I asked you if you were familiar
3 with the -- I'll ask this question, are you
4 familiar with the initial indentures relative to
5 the \$2 billion in senior debt that are subject not
6 motion?

7 MR. FOX: Objection. Again, to clarify.
8 There's a single indenture. And it's the
9 only indenture. There's -- not an initial
10 indenture, and subsequent. There's only a
11 single, original indenture.

12 Q. Is it your understanding that there's
13 only a single, original indenture?

14 A. Yes, absolutely.

15 Q. And then is there a supplement of any
16 sort that you're aware of?

17 A. No.

18 Q. So is there any document to which
19 Wilmington Trust is a party, reflecting your --
20 your status as the indenture trustee?

21 A. That would be a try party agreement.

22 Q. Between who?

23 A. Between Delphi, previous trustee, and
24 ourselves.

25 Q. And are you familiar with that document?

13

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2 A. Yes.

062806.txt

3 Q. And when was that executed, roughly?

4 A. I believe it was roughly -- some --
5 shortly before the filing of the case. I don't
6 have the exact date, but I -- sure it wasn't too
7 much earlier than when they filed.

8 Q. What are your responsibilities, you
9 personally, your responsibilities, with respect to
10 managing the Delphi account? & is it fair if we
11 refer to it as the Delphi account?

12 A. Yes.

13 Q. Is that the way you refer to the
14 Wilmington Trust?

15 A. Yes.

16 Q. What are your responsibilities with
17 respect to managing the Delphi account?

18 MR. FOX: I'm just going to interject.
19 I'm going to let the witness answer this
20 question, because I give you a little
21 background, but we've had discussion about
22 not getting into, you know, certain issues
23 related to Wilmington Trust's role as
24 indenture trustee, so I want to make sure
25 we're not going too far afield.

14

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2 MR. HOGAN: Understood.

3 A. At the present time, we -- we were
4 appointed the -- a member of the creditors
5 committee, so it's pretty much our role.

6 Q. What do you personally do with respect
7 to managing the Delphi account??

062806.txt

8 A. I monitor the account. I attend all
9 the -- as many committee meetings as I can. I do
10 all the general administration that I'm required
11 to do.

12 Q. Okay. When you say that you -- when you
13 say that you monitor the account, can you give me
14 a sense of the kinds of things that you do?

15 A. Well, as mentioned, I attend creditor
16 committee meetings, participate on creditor calls.
17 You know, take phone calls. That come
18 in. You know.

19 Q. When you say you take phone calls in a
20 come in?

21 A. If there's an inquiry from the outside
22 somewhere, related to the account, I'll takes it.

23 Q. Has Wilmington had discussions with
24 holders of Delphi debt, in connection with your
25 management of the Delphi account?

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2 MR. FOX: I'm going to stop there.
3 That's beyond the scope of the deposition --
4 of the discovery as limited by the court.

5 MR. HOGAN: I don't think so. I'm
6 trying to get at -- I'm trying to go to at
7 how information -- how Wilmington has
8 collected the information to support the
9 factual basis for the motion.

10 Q. So maybe if you could answer my question
11 yes or no to begin with.

12 MR. FOX: But -- that -- that question
13 is beyond the scope. And it's not limited

062806.txt

14 to -- to the factual allegation supporting
15 objection.

16 MR. HOGAN: It's a 30(b)(6) deposition.
17 I'm trying to get at the source of this
18 knowledge. I think it's a very fair
19 question. So --

20 MR. FOX: Well, if you want to ask him
21 about specific facts and what the source of
22 his knowledge is, go ahead.

23 MR. HOGAN: We'll get there, but I
24 wanted to ask him in the first instance, he
25 medical in the course of monitoring the

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2 Delphi account, one of the things he did was
3 take phone calls that come in.

4 Q. And my question is, take phone calls
5 from who.

6 A. Could be internally. I haven't received
7 very many. I may be someone -- an operational
8 question that someone may have, someone may call
9 on proof of claim, if the trustee is filing it,
10 you know, do we have an obligation to file it.
11 Those kinds of inquiries.

12 Q. Okay. Are you familiar with the
13 objection that Wilmington Trust filed to Delphi's
14 motion for order approving implementation of a
15 subject to attrition plan with the UAW, and a
16 special attrition plan with the IUE-CWA.

17 A. Yes.

18 Q. Who authorized the filing of that

062806.txt

19 objection?

20 MR. FOX: I'm going to object, it's
21 outside the scope of the inquiry.

22 DIR Q. You can answer.

23 MR. FOX: No. I'm going to direct him
24 not to answer.

25 MR. HOGAN: This is going to be a real

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2 short dep, because --

3 MR. FOX: The court was specific that
4 discussion should be limited to factual basis
5 for Octobers to the motion. (tape). Asking
6 who authorized Wilmington Trust to file it
7 has nothing to do with the -- the narrow
8 window set by the court.

9 MR. HOGAN: Well, the window set by the
10 court was what it was.

11 MR. FOX: And that's what we're going to
12 stick to today.

13 MR. HOGAN: And if you want to instruct
14 him not to answer, these some basic questions
15 about Wilmington Trust's knowledge, and
16 administration of this account, and now I'm
17 talking specifically about this objection.
18 Who authorized the filing of that objection,
19 is a question that I'm going to ask, and they
20 be the next question is going to be, was that
21 a group of people, was it a single person,
22 how did you go about doing that? That always
23 goes to the basis for filing the objection.

24 Q. So my question was, who authorized the

062806.txt

25 filing of that objection?

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2 MR. FOX: You can answer that question.

3 A. Wilmington Trust company, based on the
4 advice of counsel.

5 Q. Okay. Now, I don't want to talk about
6 the advice that you received from your counsel.
7 But who at Wilmington Trust company -- what
8 people, authorized the filing?

9 A. Myself.

10 Q. Anybody else?

11 A. I was -- it was mentioned to my boss,
12 also, I always escalate that. So he was aware
13 also.

14 DIR Q. Did you have to seek approval or
15 authorization from anyone else before authorizing
16 the filing of the motion?

17 MR. FOX: I'm going to object. I'm
18 going to instruct the witness not to answer.

19 MR. HOGAN: Not on privilege grounds, I
20 assume.

21 MR. FOX: On the court's limitation on
22 the subject matter of this deposition.

23 Q. Well, in terms of getting to the point
24 where you were comfortable authorizing the filing
25 of this motion, did you have discussions with

19

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2 anyone other than your lawyers, to understand the
3 point of the motion and the objection?

062806.txt

4 MR. FOX: You can answer.

5 A. No.

6 Q. Did anyone other than yourself review
7 Wilmington Trust's objection, prior to the time
8 that it was filed?

9 A. No.

10 Q. Did you review Wilmington Trust's
11 objection prior to the time that it was filed?

12 A. Yes.

13 Q. Okay. In terms of authorizing the
14 filing of the motion -- I'm sorry, of the
15 objection, did anyone, including your counsel,
16 provide you with factual information to support
17 that decision?

18 MR. FOX: I'm going to object. And
19 simply instruct the witness to answer yes or
20 no so that we don't get into privileged
21 communications.

22 A. Could you repeat it?

23 Q. Sure. In terms of authorizing the
24 filing of the motion -- strike that?

25 MR. FOX: You know what? Al, when you

20

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2 ask it again, ask it separately, for counsel
3 and anybody else.

4 MR. HOGAN: That's fine. Then we'll
5 avoid the objection.

6 Q. In terms of authorizing filing of the
7 objection, did anyone other than your lawyers
8 provide you with factual information to support
9 that decision?

062806.txt

10 A. No.

11 Q. In terms of -- and this is a yes-or-no
12 question -- in terms of authorizing filing of
13 the objection, did your counsel provide you with
14 factual information to support that decision?

15 A. Yes.

16 Q. Okay. Now, I would like to know what
17 facts were provided to you by your counsel, in
18 terms of your decision to authorize the filing of
19 the objection.

20 Just the facts.

21 MR. FOX: Okay, now, let me interject
22 there. If you can differentiate between
23 facts and legal advice, then -- and limit
24 your answer to providing specific facts, you
25 can answer the question. If you can't do

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1 Cimalore - rough draft

2 that, then you should not answer the
3 question, because you'll be revealing
4 privileged information.

5 Q. Do you have the question in mind?

6 A. No.

7 Q. With that admonition, let me read the
8 question back. What facts were provided to you by
9 your counsel, in terms of your decision to
10 authorize the filing of the objection?

11 A. I don't believe I'm able to distinguish
12 between the two.

13 (Discussion off the record.)

14 MR. HOGAN: Sorry about that. Let's

062806.txt

15 mark this as Exhibit 1.
16 (description was marked
17 Cimalore Exhibit 1 for identification, as of
18 this date.)
19 Q. Mr. Cimalore, we're showing you what's
20 been marked as Exhibit 1 to your deposition.
21 Is -- is this the objection of Wilmington Trust
22 that you have seen prior to today?
23 A. I'm sorry, was that a question?
24 Q. Yes.
25 Have you seen this objection prior to

22

1 Cimalore - rough draft
2 today?
3 A. Yes.
4 Q. Is this the objection that you reviewed
5 prior to the time it was filed?
6 A. Yes.
7 Q. If you could take a look at paragraph 5
8 of this objection, on page 2.
9 Maybe read that whole paragraph, and let
10 me know when you're through with it.
11 (The witness reads the document.)
12 A. Okay.
13 Q. Take a look at the first clause of
14 paragraph 5, which reads, consequently, since
15 Delphi Corporation does not actually employ any of
16 the debtors unionized employees, and will not
17 realize any direct benefit from a reduction in the
18 level of the debtor's unionized work force. You
19 see that clause?
20 A. Yes.

062806.txt

21 Q. What's Wilmington's factual basis for
22 that assertion, in that clause? You can break it
23 up, because it's a clause that actually is --
24 contains two parts to it.

25 MR. FOX: Why don't you answer one

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2 clause at a time.

3 Q. Sure. Let me ask a different question.
4 What is the -- what is Wilmington's basis for the
5 assertion that Delphi Corporation does not
6 actually employ any of the debtor's unionized
7 employees?

8 A. Based on the advice of counsel.

9 Q. Any other facts that you're relying on
10 in terms of making that assertion?

11 A. No.

12 Q. Has Wilmington done anything to
13 investigate whether or not Delphi Corporation
14 actually employs any of its unionized employees?

15 MR. FOX: Let me object. When you say
16 has Wilmington, are you talking about -- the
17 bank itself, or are you talking through
18 counsel?

19 Q. About the bank itself. The bank itself.

20 MR. FOX: Independent of its counsel.

21 MR. HOGAN: Yes.

22 A. Not independent of counsel, no.

23 Q. Did you have -- did you instruct counsel
24 to investigate whether or not Delphi Corporation
25 actually employs any of its unionized employees?

062806.txt

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1 Cimalore - rough draft

2 A. Yes.

3 Q. When did you do that?

4 A. In conversation. I don't know a
5 specific time, in conversations brought up.

6 Q. As you understand it, what's the --
7 what's the -- what's the point of the objection,
8 in your own words?

9 MR. FOX: I'm going to object, but -- I
10 think the objection speaks for itself.

11 You can answer if you can.

12 A. I agree it speaks for itself. I don't
13 know, picking out any one part would give it
14 justice. You know, I don't.

15 Q. Well, would you agree with me that
16 Wilmington's margin theme in this objection is
17 that Delphi Corporation should not bear the cost
18 of labor transformation in this reorganization?

19 MR. FOX: I'm going to object to the
20 question, because I think again we're getting
21 outside the scope as limited by the court,
22 which is the factual allegations supporting
23 the basis for the objection. So I'll let him
24 answer this, if he can, but -- let's --

25 MR. HOGAN: I'm going somewhere with

25

1 Cimalore - rough draft

2 this.

3 MR. FOX: Let's get back to facts.

4 A. Would you repeat.

5 Q. Would you agree that women's many theme

062806.txt

6 is that Wilmington corporation, that entity should
7 not bear the cost of labor transformation in this
8 reorganization?

9 A. I'm not sure that it's that cut and dry.
10 I don't -- I think it's clear that they shouldn't
11 bed only one to take the brunt of it.

12 Q. And why does Wilmington care whether or
13 not Delphi Corporation is the only entity that
14 takes the brunt of the cost of labor
15 transformation?

16 MR. FOX: You can answer.

17 A. Because our -- our debt and claims are
18 at the parent level.

19 Q. How do you know that?

20 What's your basis for saying that?

21 A. I would say the indenture.

22 Q. And what about the indenture makes you
23 believe that the debt and claims are at the parent
24 level?

25 A. It only references Delphi corp. as --

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1 Cimalore - rough draft

2 MR. FOX: Al, if you're offering to have
3 some of the other entities be on the hook for
4 the bonding we'd be happy to discuss that.

5 MR. HOGAN: I'm just asking his
6 understanding, that's all.

7 Q. So your answer is, is owning references
8 Delphi corp.?

9 A. In the indenture, I don't have it in
10 front of me, but Delphi Corporation is the debtor

062806.txt

11 on the indenture entity.

12 Q. I should have asked this earlier, but
13 real fast, can you just tell me what your
14 educational background is?

15 A. I have a business degree in business
16 administration, I mean a BS in business
17 administration, and I have a JD.

18 Q. When did you get your JD?

19 A. Getting old. 1980.

20 Q. You -- you yourself have read the
21 indenture that's the subject of the Delphi
22 account, before?

23 A. Yes.

24 Q. So it's important to you that Delphi
25 Corporation is the entity that is the counterparty

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2 to that indenture? Is that correct?

3 A. Yes.

4 MR. FOX: Objection.

5 Q. And is that because the indenture is the
6 written document, or contract, as you understand
7 it, that establishes the rights and obligations
8 among the parties?

9 A. Correct.

10 Q. In terms of the factual assertion that
11 Delphi Corporation does not actually employ any of
12 the debtor's unionized employee, take a look back
13 at paragraph 5 -- are you with me?

14 A. Uh-huh.

15 Q. Have you -- has Wilmington reviewed any
16 other documents to substantiate that assertion, or

062806.txt

17 test that assertion?

18 A. No.

19 MR. FOX: I just wanted to clarify,
20 you're talking about individuals of the trust
21 company, not counsel.

22 Q. Correct.

23 A. No.

24 Q. Do you know whether or not your counsel
25 has reviewed any other documents to substantiate

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1 Cimalore - rough draft

2 that assertion?

3 Do you know one way or the other?

4 A. Yes.

5 Q. And what's the answer to that question?
6 They have?

7 A. Oh, yes, they have.

8 Q. And what documents -- what documents are
9 you aware of that your counsel has reviewed to
10 substantiate the assertion that Delphi Corporation
11 does not actually employ any of the debtor's
12 unionized employees?

13 MR. FOX: I'm just going to object, and
14 point out that you produced documents to us
15 that have been labeled highly confidential,
16 that we're not able to even share with our
17 client. So -- and those relate directly to
18 the subject matter of this motion objection,
19 so I presume you're not asking the witness
20 about those things.

21 MR. HOGAN: I'm just asking him what

062806.txt

22 documents he's aware of that -- that -- the
23 point of my question is what documents he's
24 aware of that Wilmington or its agent,
25 including its counsel, has reviewed.

29

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2 Q. And so if you can tell me, what those
3 documents are --

4 MR. FOX: You mean other than the highly
5 confidential documents?

6 MR. HOGAN: I'm assuming he hasn't seen
7 them, if he knows that is you've reviewed
8 them, he can tell me about that.

9 MR. FOX: You're asking him to identify
10 them?

11 MR. HOGAN: Yes.

12 MR. FOX: I don't know how he can do
13 that.

14 MR. HOGAN: Coming back up a few
15 questions, I asked if you knew that counsel
16 is reviewing documents. The answer is yes.
17 So my question is, do you know which
18 documents the counsel has reviewed to support
19 the assertion that Delphi Corporation did not
20 support any of the unionized debtor
21 employees.

22 MR. FOX: He said he doesn't know.

23 MR. HOGAN: He said he did know.

24 MR. FOX: He said he will looked at
25 documents, now you're asking him what were

30

1 Cimalore - rough draft
Page 24

062806.txt

2 they, and now I'm asking you, because of your
3 stamping the documents highly confidential,
4 he can't know the answer (tape).

5 Q. To clear up my question, what I'm asking
6 for is do you know one way or the other what those
7 documents were, that counsel reviewed, to support
8 the assertion that Delphi Corporation does not
9 actually employ any of the debtor's unionized
10 employees. Do you know any or all of what that
11 was your counsel looked at?

12 A. No.
13 (description was marked
14 Cimalore Exhibit 2 for identification, as of
15 this date.)

16 Q. Showing you what's been marked as
17 Exhibit 2 to your deposition. Can you tell me if
18 you've seen this before?

19 A. Yes.

20 Q. When did you -- when did you first see
21 Exhibit 2?

22 A. I -- I don't know the exact date.

23 Q. After you -- after you reviewed
24 Exhibit 2, did you discuss, which is the debtor's
25 motion for order under 11 USC 363 B, concerning

31

1 Cimalore - rough draft
2 the UAW supplement and the IEW special attrition
3 program. After you received this, did you have
4 any discussions with anyone at Wilmington about
5 the motion?

6 A. No.

062806.txt

7 Q. Did you have anyone -- any discussions
8 with anyone outside of Wilmington, about the
9 motion?

10 MR. FOX: I'll just --

11 Q. With anyone.

12 MR. FOX: The witness can answer the
13 question, but just limit your answer to yes
14 or no.

15 A. Oh, yes.

16 Q. Other than your counsel, did you have
17 discussions with anyone outside of Wilmington
18 Trust Company, about the motion?

19 A. No.

20 MR. FOX: We're excluding from that any
21 committee discussions concerning the motion.

22 MR. HOGAN: I don't know if I so limited
23 it.

24 Q. Have you had discussions with anyone on
25 the committee concerning the motion?

32

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2 MR. FOX: Well, the -- committee counsel
3 has been the leading -- leading any
4 discussions that have occurred. So they're
5 going to be privileged.

6 Q. Let me ask it this way, other than
7 discussions with lawyers, have you had discussions
8 with anyone about the motion?

9 A. No.

10 Q. Does -- does Wilmington Trust company
11 agree with the factual assertion that Delphi
12 Corporation those restructure its labor costs, in

062806.txt

13 order to engage in a successful reorganization?
14 A. Yes.
15 Q. Does Wilmington Trust company agree with
16 the factual assertion that Delphi Corporation has
17 to restructure its manufacturing footprint in the
18 United States to engage in a successful
19 reorganization?
20 MR. FOX: Excuse me, do you mean just
21 the parent company Delphi Corporation, or do
22 you mean the consolidated entity?
23 Q. I mean the consolidated entity.
24 MR. FOX: You can answer.
25 A. Yes.

33

1 Cimalore - rough draft
2 Q. Does Wilmington Trust company agree with
3 the factual assertion that to successfully
4 restructure, the debtors will be better served by
5 reaching a consensual resolution of its labor cost
6 issues with its major unions?
7 A. Yes.
8 Q. Other than the -- other than the
9 objection to the allocation of the costs of the
10 program, outlined in the motion, does Wilmington
11 Trust object to any other assertion in terms of
12 the advisability of the attrition programs that
13 are subject to the motion?
14 MR. FOX: I'm going to object there,
15 because again we're getting outside the scope
16 of the deposition, as limited by the court,
17 which is limited to factual allegations

062806.txt

18 supporting Wilmington Trust's basis for
19 objecting to the motion. So you know, if we
20 objected, fine, ask about that. If there's
21 some other issue, I think you get beyond the
22 scope at that point.

23 MR. HOGAN: Okay. That's my last
24 question on that line, really, so if you
25 could answer that one.

34

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2 MR. FOX: What's the question.

3 Q. Other than the allegation of altercation
4 of cost of of the attrition program outline in the
5 motion does Wilmington Trust to be the any other
6 assertions in terms of the advisability of the
7 attrition programs that are subject to the motion?

8 MR. FOX: Well, the objection speaks for
9 itself, too.

10 Q. Do you know if?

11 A. As he said, it's spelled in the
12 objection.

13 DIR Q. What's your understanding? What's
14 Wilmington's understanding?

15 MR. FOX: I think we're getting far
16 afield.

17 We're just beyond the scope, so let's
18 just move on.

19 MR. HOGAN: Is that an instruction not
20 to answer?

21 MR. FOX: Yes.

22 MR. HOGAN: Take a three-minute break,
23 if we could.

062806.txt

24 (A recess was taken.)

25 MR. HOGAN: Can we mark this next?

35

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2 (description was marked

3 Cimalore Exhibit ExNo for

4 identification, as of this date.)

5 Q. Showing you what's been marked as

6 Exhibit 3 to your deposition. Do you know what

7 that is?

8 Take your time. Look at it.

9 (The witness reads.)

10 Q. Are you able to tell what that is?

11 While you're radioing, let me ask a

12 different question. Would you be able to quickly

13 recognize the operative indenture with respect to

14 the Delphi account?

15 A. No.

16 Q. You would not be able to quickly

17 recognize it.

18 A. Uh-uh.

19 Q. Is this it?

20 A. It's hard to tell. I can't tell from --

21 Q. Might be, might not be.

22 A. Right.

23 Q. I just want to look at a couple section.

24 Could you go to section 6.06, page 27 of the

25 document.

36

1 Cimalore - rough draft

2 A. 6.07?

062806.txt

3 Q. 6.06. It's entitled direction
4 proceedings. On page 27 of the document.

5 A. Okay.

6 Q. If you could read that first paragraph,
7 let me know when you're through.

8 A. Okay.

9 Q. In the actuality operative indenture, is
10 there a similar provision, whether or not this is
11 1, is there a similar provision?

12 MR. FOX: I'm going to object. This is
13 beyoned scope of --

14 MR. HOGAN: It's not. It's not.

15 MR. FOX: How is it not.

16 MR. HOGAN: It's a little bit of
17 foundation to get to the question I want to
18 ask, but -- I just want to know is the
19 indenture that you're operating under in the
20 Delphi account have -- assuming this is not
21 it -- strike that.

22
23 Q. Does the Delphi indenture that you're
24 familiar with have a provision regarding direction
25 of proceedings?

37

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2 A. Without it in front of me, I don't know
3 it's exact language that it says.

4 Q. In general, does the indenture have
5 provision regarding direction of proceedings?

6 A.

7 A. I don't know if they're labeled it's a
8 direction of proceedings, it may be included

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9 somewhere in another section. I don't know if it
10 specifically has that section. I don't know what
11 the subtitle, what's it's listed under.

12 You know what I'm saying? It could be
13 under a different section.

14 Q. With respect to the objection that
15 Wilmington Trust filed, did it do so at the
16 direction of any of the holders of Delphi
17 securities?

18 MR. FOX: I'm going to object. That's
19 just completely beyond the scope of the
20 deposition. It's clearly beyond the scope as
21 limited by the court. We're just not going
22 to get into that.

23 MR. HOGAN: I -- I disagree strongly.

24 MR. FOX: Well.

25 MR. HOGAN: Because there are some

38

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2 assertions in here about who employee, and
3 who's getting concrete benefits from in
4 attrition plan. That's what I'm getting at.

5 MR. FOX: Why don't you ask about those
6 things, then, as opposed to --

7 MR. HOGAN: This is the direct way to do
8 it.

9 Q. Did you have any discussions with any
10 security holders about filing this objection?
11 That's my objection. And that will obviate?

12 MR. FOX: You already asked that, and
13 you got an answer. And --

062806.txt

14 MR. HOGAN: So asked and answered is
15 fine. If that's your objection.
16 I'm referring to this --
17 MR. FOX: Well, but you're heading in a
18 different path. You're heading --
19 The question you have on the table is
20 beyond the scope, which is limited to factual
21 allegations supporting Wilmington Trust's
22 basis for objecting to the motion. The
23 question is beyond that, we're not going to
24 go there.
25 MR. HOGAN: I don't think to stay within

39

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2 what the court instructed us, I don't think I
3 have to couch every question in terms of
4 pointing to a factual allegation. This is
5 very much about the foundation for the
6 assertions in the motion. That's what I'm
7 getting at.
8 MR. FOX: Then you should limit your
9 questions to the assertions in the motion.
10 MR. HOGAN: I did. With respect to the
11 filing of the motion, and any of the
12 assertions that you made in the motion, was
13 Wilmington Trust directed in any respect by
14 the holders of Delphi securities?
15 MR. FOX: I suggest, Al, if you want an
16 answer, the way you should ask -- a different
17 way. Which is whether any of the assertions
18 set forth in the motion were -- are factual
19 information set forth in the motion was

062806.txt

20 communicated to Wilmington, by anybody, quite
21 frankly.

22 Q.

23 MR. HOGAN: I appreciate that
24 suggestion. But I think my question is the
25 one indicated to ask, and that is -- so I'll

40

1 Cimalore - rough draft

2 ask it again.

3 DIR Q. With respect to the filing of the
4 motion, and any of the assertions that you made in
5 the motion, that Wilmington made in the motion,
6 was Wilmington Trust directed in any respect by
7 the holders of Delphi securities?

8 MR. FOX: I'm going to object, and
9 instruct the witness not to answer that
10 question.

11 Q. Did you have any communications with any
12 holders of Delphi securities, in connection with
13 the filing of this objection?

14 MR. FOX: I'm going to object. You can
15 answer it.

16 A. No.

17 Q. If you would take a look at Exhibit 3,
18 and that is the indenture. It's a indenture. If
19 you could take a look at section 7.01 on page 28,
20 and read just that first paragraph, at 7.01. And
21 let me know when you're through with that.

22 A. The second paragraph?

23 Q. The first paragraph, I'm sorry.

24 A. Okay.

062806.txt

25 (The witness reads.)

41

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2 A. Okay.

3 Q. Taking a look at the last clause of that
4 paragraph, there's a reference to the same degree
5 of care and skill as a prudent man would exercise
6 under the circumstances. Do you see that.

7 A. Yes.

8 DIR Q. Was that your understanding of
9 Wilmington Trust's obligations when it authorized
10 the filing of the objection?

11 MR. FOX: I'm going to instruct the
12 witness not answer. It's well beyond the
13 scope of the discovery as limited by the
14 court.

15 DIR Q. Did you -- did you have a standard of
16 care in mind when you authorized the filing of the
17 motion?

18 MR. FOX: I'm going to object and
19 instruct the witness not answer. It's way
20 beyond the scope of the discovery as limited
21 by the court.

22 DIR Q. Did you have a standard of care in mind,
23 when you reviewed the proposed objection,
24 including the assertions in the objection, and
25 then offer up the filing of the objection?

42

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2 MR. FOX: I'm going to object and
3 instruct the witness not answer the question,
4 as well beyond the scope of the discovery as

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5 limited by the court.

6 You're asking him for his standard in
7 conducting himself rather than a factual
8 allegations supporting the objection.
9 There's a very real distinction. It is none
10 of the debtor's business as to how Wilmington
11 conducts itself internally in deciding
12 whether or how to object, and the court
13 agreed with us on that pointed. We're not
14 going there.

15 MR. HOGAN: Well, I disagree with your
16 characterization of what the debtors are
17 entitled to understand. I'm trying to get at
18 the question -- the question is, what was
19 your mind set, in terms of evaluating the
20 factual assertions contained in the
21 objection.

22 MR. FOX: I'm going to object. In the
23 context of the past few questions, it seems
24 to me that that question is just another
25 attempt to go beyond the scope of the

43

1 Cimalore - rough draft
2 discovery as limited by the court. And the
3 witness is not going to answer those
4 questions.

5 Q. And to be clear, and this is for the
6 record, the instructions not to answer, we several
7 reserve our right to go back to the court and seek
8 a further deposition. So that's --

9 MR. FOX: Be my guest.

062806.txt

10 MR. HOGAN: It's not a threat.
11 MR. FOX: You can if you want.
12 MR. HOGAN: It's a preservation of the
13 record. That's the implication of
14 instructing not no answer, because there's no
15 privilege basis for doing so.
16 MR. FOX: Well, I'm not sure about that,
17 either, but the question at the outset is
18 beyond the scope. As limited by the court.
19 MR. HOGAN: You're instructing him not
20 answer is beyond a privilege objection, I
21 assume.
22 MR. FOX: Well, I think there's
23 privilege objection there, too, but you're
24 just beyond the scope. We don't need to talk
25 about privilege.

44

1 Cimalore - rough draft
2 Q. Do you have -- do you have the objection
3 back in front of you?
4 MR. FOX: It's Exhibit 1?
5 Q. It's Exhibit 1.
6 And could you take a look at the second
7 paragraph of the objection, on page 2.
8 Okay?
9 A. Okay.
10 Q. The last clause of that paragraph, can
11 you look at the language, it says the debtors have
12 not demonstrated that Delphi Corporation and its
13 creditors will receive any concrete benefits,
14 benefit from that restructuring. Do you see that?
15 A. Yes.

062806.txt

16 Q. What's the -- does Wilmington Trust
17 believe that Delphi will not receive any concrete
18 benefit congratulate restructuring of its labor
19 cost?

20 MR. FOX: You're referring to Delphi
21 Corporation?

22 MR. HOGAN: Yeah.

23 A. Repeat that, please?

24 Q. Yes. Does Wilmington Trust believe that
25 Delphi Corporation will not receive any concrete

45

1 Cimalore - rough draft

2 benefits from restructuring its labor costs?

3 A. We think that -- I'm sorry, say that one
4 more time.

5 Q. Sure. Does Wilmington Trust believe
6 that Delphi Corporation will not receive any
7 concrete benefit from restructuring its labor
8 costs?

9 A. At this point, none that's been
10 demonstrated to us.

11 Q. And has Wilmington Trust discussed with
12 anyone other than counsel the subject of whether
13 or not Delphi Corporation will receive any
14 concrete benefit from restructuring labor cost?

15 A. Other than -- I'm sorry, other than.

16 Q. Other than --

17 A. Our counsel, or committee counsel?

18 Q. Yes.

19 A. No.

20 Q. Has Wilmington Trust tried to analyze

062806.txt

21 whether or not Delphi Corporation will receive any
22 concrete benefit from restructuring of its labor
23 costs?

24 Other than discussions with counsel.

25 A. None other than committee --

46

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2 participation or counsel, right.

3 Q. This -- this objection, Wilmington Trust
4 is asserting this in its capacity as indenture
5 trustee; is that right?

6 A. Correct.

7 Q. Ultimately, on whose behalf -- or --
8 ultimately, whose interests is Wilmington Trust
9 representing, purporting to represent by filing
10 this objection?

11 MR. FOX: I'll object. The witness can
12 answer, I suppose.

13 Q. Whose interests, group of people?

14 A. That would be the bondholders who own
15 the debt under the indenture.

16 Q. Does Wilmington Trust believe that the
17 bond holders who own the debt under the indenture
18 will not be better off if Delphi reorganizes its
19 labor structure?

20 MR. FOX: I -- could you repeat that
21 question?

22 MR. HOGAN: Yeah. I'll put it in terms
23 of --

24 Q. Does Wilmington believe that there's any
25 concrete benefit to the holders of the debt under

47

062806.txt

1 Cimalore - rough draft
2 the indenture, in the event that Delphi is
3 successful at restructuring its labor costs?
4 MR. FOX: Just read that back. I'm
5 having trouble.
6 Q. Does Wilmington believe that there's any
7 concrete benefit to the holder, the holders of the
8 debt, under the indenture, in the event that
9 Delphi is successful at restructuring its labor
10 costs?
11 MR. FOX: Which Delphi?
12 MR. HOGAN: Delphi corp.
13 MR. FOX: I don't think there's a
14 foundation to your question.
15 Q. Do you understand my question?
16 A. I do not.
17 Q. Does Wilmington believe that Delphi has
18 no labor cost? Delphi Corporation has no labor
19 costs?
20 MR. FOX: You can answer.
21 A. I don't believe direct labor costs.
22 Q. You're aware of the factual assertion, I
23 guess the factual agreement, in the objection,
24 that Delphi Corporation is the counterparty to
25 collective bargaining agreements with several

48

1 Cimalore - rough draft
2 major union, correct?
3 A. Correct.
4 Q. Are you aware that Delphi Corporation is
5 the plan sponsor with respect to its pension

062806.txt

6 plans, with its hourly work force?

7 Do you know one way or the other?

8 A. I'm not sure.

9 Q. Do you know whether or not Delphi
10 Corporation is the signatory to collectively
11 bargained hourly pension plans?

12 MR. FOX: You can answer if you know.

13 A. I'm -- I do not know.

14 Q. Does -- is Wilmington aware whether or
15 not Delphi Corporation is the signatory to
16 collectively bargained personal savings plans?

17 A. I have not seen those documents.

18 Q. Is democrat -- is Wilmington aware one
19 way or the other whether or not Delphi Corporation
20 is a signatory to collectively bargained life
21 insurance plans?

22 A. I do not.

23 Q. Is Wilmington aware whether or not
24 Delphi Corporation is the signatory entity to
25 collectively bargained healthcare plans with its

49

1 Cimalore - rough draft

2 unions?

3 A. I do not.

4 Q. Do you know whether or not Delphi
5 Corporation maintains any control over the
6 utilization of its union work force?

7 MR. FOX: I'm just going to object, and
8 instruct the witness, if he knows, to limit
9 his answer so as not to reveal the
10 conversation with counsel.

11 A. I do not.

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12 Q. Do you know whether or not Delphi
13 Corporation maintains control of its U.S.
14 manufacturing operating subsidiaries?

15 A. I do not.

16 Q. Do you know whether or not the function
17 of labor relations and human resources is
18 controlled by Delphi Corporation, as it pertains
19 to the worldwide hourly work force?

20 MR. FOX: You have to answer audibly.

21 A. I do not.

22 Q. In a slightly different question. Do
23 you know whether or not the function of labor
24 relations and human resource is controlled by
25 Delphi Corporation as it pertains to the U.S.

50

1 Cimalore - rough draft
2 hourly work force?

3 A. I do not.

4 DIR Q. Do you know, the holders of the Delphi
5 Corporation bonds that you said that ultimately
6 that's the interest that you represent, have you
7 done anything to investigate whether or not those
8 bondholders believe that Delphi Corporation will
9 benefit from a restructuring of its labor costs?

10 MR. FOX: I'm going to object. That's
11 outside the scope of the discovery as limited
12 by the court.

13 MR. HOGAN: Oh, that's dead on in the
14 discovery. Because there's a factual
15 assertion that they're not going to benefit,
16 a I want no know what they've begun to

062806.txt

17 investigate.

18 MR. FOX: No, no. Read the question
19 back?

20 MR. HOGAN: Do you know, have you done
21 anything to investigate whether or not the
22 bondholders of the \$2 billion of Delphi
23 Corporation debt referenced in the objection
24 believe that Delphi Corporation will benefit
25 from a restructuring of its labor cost.

51

1 Cimalore - rough draft

2 MR. FOX: How does that go to factual
3 allegation supporting Wilmington Trust's
4 basis for objecting.

5 MR. HOGAN: Because there's factual
6 assertion that there wouldn't won't be any
7 concrete benefit asserted on behalf of the
8 bondholders and I wanted to know if the
9 bondholders know.

10 MR. FOX: What they think --

11 MR. HOGAN: My question was, have you
12 done anything to investigate whether the
13 bolders, who holds the \$2 billion of Delphi
14 debt referenced in the objection, believe
15 that Delphi Corporation would benefit from a
16 restructuring of its labor cost.

17 MR. FOX: That's going to judgment, Al,
18 as opposed to factual allegations. And
19 that's where we're not going. This is --
20 this is not --

21 MR. HOGAN: Can I get a yes or no to
22 that question.

062806.txt

23 MR. FOX: No. It's outside the scope.

24 MR. HOGAN: I don't think it's outside

25 the scope at all.

52

1 Cimalore - rough draft

2 MR. FOX: If you wanted to know what
3 other bond holders think, I guess you can
4 take their depositions and ask them for their
5 views.

6 MR. HOGAN: I wasn't asking what other
7 bondholders think.

8 MR. FOX: Your question goes judgment as
9 opposed to factual determination, and we're
10 not going there.

11 MR. HOGAN: I'm going to read the
12 question one nor time. It doesn't go to any
13 judgment. The question is, has Wilmington
14 done anything to investigate whether or not
15 the holders of the \$2 billion of Delphi debt
16 reference it's in the objection believe that
17 Delphi Corporation will benefit from a
18 restructuring of its labor costs?

19 MR. FOX: That's beyond the scope, we're
20 not going to answer that question.

21 Q. Have you read any of the offering
22 memoranda with respect to the bonds under the
23 indenture?

24 A. I have never seen a copy.

25 Q. So in terms of the factual assertions

53

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062806.txt

2 contained in the objection, it's fair to say that
3 Wilmington did not consider any of the statements
4 in the offering documents associated with the
5 bonds that it represents. Fair?

6 MR. FOX: When you ask that question,
7 you say Wilmington. Who are you referring
8 to?

9 MR. HOGAN: Wilmington.

10 MR. FOX: Specifically as --

11 MR. HOGAN: It's a 30(b)(6) dep.

12 MR. FOX: As opposed to its counsel?

13 MR. HOGAN: Yeah, as opposed to its
14 counsel.

15 Q. It's fair to say that Wilmington did not
16 consider any of the statements in the offering
17 documents associated with the bonds that it
18 represented. Is that fair?

19 A. The offering documents being prospectus?

20 Q. Yes, sir.

21 A. Correct.

22 Q. Do you know has Wilmington reviewed any
23 10 Ks filed by Delphi Corporation?

24 A. No.

25 You're talking prior to bankruptcy?

54

1 Cimalore - rough draft

2 Q. Yes, sir.

3 A. No, I have not, and I don't believe we
4 received any from the successor trustee. But I
5 have not.

6 MR. HOGAN: Why don't we take a
7 two-minute break. Thanks.

062806.txt

8 (description was marked
9 Cimalore Exhibit 4 for identification, as of
10 this date.)

11 (description was marked
12 Cimalore Exhibit 5 for identification, as of
13 this date.)

14 (description was marked
15 Cimalore Exhibit 6 for identification, as of
16 this date.)

17 (description was marked
18 Cimalore Exhibit 7 for identification, as of
19 this date.)

20 Q. Showing you what's been marked as
21 Exhibit 4 to your deposition. Not to try and
22 trick you. You testified a moment ago that you
23 don't believe you had reviewed any of the offering
24 documentation for the Delphi Corporation bonds
25 referenced in the objection. I'll represent to

55

1 Cimalore - rough draft
2 you that this is such a document. Looking at
3 this, does that refresh you in any sense in terms
4 of having seen this document before?

5 A. I have not.

6 Q. You've seen prospectuses, though,
7 correct?

8 A. I'm -- pertaining to this case, or
9 pertaining to other cases in general?

10 Q. In general.

11 A. I have seen in my prior life, yes.

12 Q. And you're familiar with the concept of

062806.txt

13 a risk factors section in prospectuses?

14 A. Yes.

15 Q. And in fact, on the --

16 In fact, on the document with the page
17 numbers S-3, of Exhibit 4, that's entitled risk
18 factors. You see that?

19 A. Yes.

20 Q. Would you agree with me that for the
21 holder of a bond, that the elimination or
22 mitigation of a risk to the company that issued
23 that bond is a -- is a benefit to the bondholder?

24 MR. FOX: I'm going to object. And come
25 back to the court's determination. Which is

56

1 Cimalore - rough draft
2 to limit this to factual allegations
3 supporting Wilmington Trust's basis for
4 objecting to the motion.

5 So I don't know how what you're
6 referring to would be a factual allegation
7 supporting Wilmington Trust's basis for the
8 objection. It's your defense, and you can
9 raise this with the court if you want, be my
10 guest. But I don't know how it supports
11 Wilmington Trust's trust basis for the
12 objection.

13 MR. HOGAN: Well, that's the factual
14 assertion in the objection that Wilmington
15 has made that Delphi Corporation won't
16 receive any concrete benefit from that
17 restructuring.

18 MR. FOX: Okay.

062806.txt

19 MR. HOGAN: I'm testing that assertion.
20 That's completely what the deposition is
21 about, and we'll definitely be back in front
22 of the judge on this one.

23 MR. FOX: And you're testing it with a
24 prospectus from 1999, how?

25 MR. HOGAN: Well, my first question, I

57

1 Cimalore - rough draft
2 directed him there, and I'm talking
3 generally, and I said, I want to know if the
4 witness would agree that for the holder of a
5 bond, the elimination or mitigation of a risk
6 to the company that issued that bond is a
7 benefit, or potential benefit to the
8 bondholder.

9 MR. FOX: Well, who's to say -- the
10 debtor said it, so the --

11 MR. HOGAN: Is your objection
12 speculation?

13 MR. FOX: Well, you don't have a
14 foundation. The fact that you wrote it, the
15 debtor wrote a document, and said in the
16 document that the debtor thought it was risk
17 factor.

18 MR. HOGAN: Are you going to testify, or
19 is it a speculation objection.

20 MR. FOX: No, I want to have a
21 discussion --

22 MR. HOGAN: I don't want to have a
23 discussion.

062806.txt

24 MR. FOX: Well, we are, because I said,
25 it's way beyond the scope as limited by the

58

1 Cimalore - rough draft
2 court, and I think the foundation is real
3 suspect here. Now -- I don't -- this witness
4 can't testify about this, and what he thinks,
5 what he tells you about this is irrelevant.
6 You can -- you can take this --

7 MR. HOGAN: I appreciate your question.
8 So your objections, I think, are foundation,
9 speculation and irrelevant.

10 MR. FOX: And beyond the scope as
11 limited by the court.

12 MR. HOGAN: I guess agree with that, so
13 with all your objection --

14 Q. My question is certainly, looking at the
15 risk factor section in a prospect you can us, any
16 prospectus, as a general matter, is the case that
17 a elimination or the mitigation of a risk is a
18 benefit to the bondholders?

19 MR. FOX: If you understand and can
20 answer that, go ahead.

21 A. I really don't.

22 Q. Okay. So in terms of -- does Wilmington
23 Trust seek to identify risks to the corporations,
24 to the corporations, with which it is -- engaged
25 as indenture trustee, or serves as indenture

59

1 Cimalore - rough draft
2 trustee?

3 MR. FOX: I'll object to that.

062806.txt

4 Q. Do you try to figure out if the
5 companies have risks to their operations and
6 finances, in your capacity as an indenture
7 trustee?

8 A. Repeat that one more time.

9 Q. Yeah. In Wilmington's capacity as an
10 indenture trustee, does it attempt to assess the
11 risks to a company's finances and operations?

12 A. At what time? If I'm not privy to the
13 document, I don't know --

14 Q. At any time. As you sit here today, are
15 you attempt to go assess the risks to the
16 companies for those accounts that you're managing?

17 MR. FOX: Objection. That's way beyond
18 the scope of this. Objection. You
19 specifically wanted to get into the internal
20 operations of Wilmington generally, and the
21 court said you can't. And we're not going to
22 go down a path now.

23 MR. HOGAN: I'm here because you're
24 objecting to a question that's pretty simple,
25 and I'm just trying to get a foundation.

60

1 Cimalore - rough draft

2 MR. FOX: I understand, but the question
3 is way beyond the scope of the deposition.

4 MR. HOGAN: It's not. There's an
5 assertion in the objection that Delphi
6 Corporation won't receive any concrete
7 benefit from the restructuring.

8 MR. FOX: Yeah.

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9 MR. HOGAN: And I'm testing that.
10 That's all I'm doing.
11 MR. FOX: But you're not testing it
12 based on anything this witness knows anything
13 about.
14 MR. HOGAN: If that's going to be the
15 answer, then that's fine.
16 MR. FOX: He already testified, he's
17 never seen this before.
18 MR. HOGAN: I can still put the document
19 in front of him, and test some of the
20 assertions and see if he has an opinion,
21 agrees one way or the other, whether or not
22 they've investigated. That's all fair game.
23 MR. FOX: Well, I don't think you can
24 based on the judge ace limitation, but if the
25 witness can answer, I'll let him answer.

61

1 Cimalore - rough draft
2 Q. Okay, so let's look at Exhibit 4, and on
3 page S-4 of the document. This is still in the
4 risk factor section. Of the prospectus for
5 \$1.5 billion of Delphi bonds.
6 Do you see --
7 A. I'm sorry, where are you?
8 Q. I'm on page S-4, about two-thirded way
9 down the page N all capital letters it reads, our
10 which is may be adversely impacted by work
11 stoppages and other labor relations matters
12 arising from the general conduct of business or
13 from the separation. You see that?
14 A. Uh-huh. Yes.

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15 Q. And then, the paragraph below that.
16 Could you see the sentence says, we are subject to
17 a risk of work stoppages and other labor relations
18 matters because our hourly work force is highly
19 unionized? You see that?

20 A. Yes and it's injection, General Motors,
21 in connection with the preparation of our company,
22 we will assume the terms of the national labor
23 agreements negotiated by General Motors. You see
24 that sentence.

25 A. Yes.

62

1 Cimalore - rough draft

2 Q. Now, in terms of the statements in
3 Wilmington's objection that Delphi Corporation
4 won't receive any concrete benefit from a
5 restructuring of its labor costs, did you consider
6 the fact that the corporation was subject to a
7 risk of work stoppages and other labor relations
8 matters, because its hourly work force was highly
9 unionized?

10 MR. FOX: I'm going to object. I think
11 we need to clarify the question. Are you
12 asking him whether he reviewed these risk
13 factors, in making his determination? Or
14 whether he considered the issue generally?
15 Because he already told you, he never read
16 this.

17 MR. HOGAN: My question was, in terms of
18 authorizing the objection, did Wilmington
19 consider the fact that Delphi Corporation was

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20 subject to a risk of work stoppages and other
21 labor relations matters, because its hourly
22 work force was highly unionized? Did you
23 consider that?

24 MR. FOX: Well, and then the other
25 question, I think, the clarification is

63

1 Cimalore - rough draft
2 needed, you're talking about democrat
3 corporation specifically?

4 MR. HOGAN: I said definitely
5 corporation is.

6 MR. FOX: Or the U.S. entities
7 generally.

8 MR. HOGAN: I said Delphi Corporation.

9 MR. FOX: Well, then, you don't have a
10 foundation for the question. The witness can
11 answer if he can.

12 Q. In terms of authorizing the objection,
13 did Wilmington consider the fact that Delphi
14 Corporation was subject to a risk of work
15 stoppages and other labor relations matters
16 because its hourly work force was highly
17 unionized?

18 MR. FOX: Objection.
19 You can answer.

20 A. Yes.

21 Q. How did you consider it?

22 A. Through discussions with counsel.

23 Q. Any other way?

24 A. In committee meetings.

25 Q. Do you agree that Delphi Corporation is
Page 52

062806.txt

64

1 Cimalore - rough draft
2 subject to a risk of worm work stoppages and other
3 labor relations matters because its work force is
4 highly unionized?

5 MR. FOX: Objection. There's no
6 foundation for that question.

7 Q. Is that your belief one way or the
8 other?

9 A. Repeat it?

10 Q. Do you agree that dealt corporation is
11 subject to a risk of work stoppages and other
12 labor relations matters because its work force is
13 highly unionized?

14 MR. FOX: Again, I'm going to object.
15 And just to clarify, you're specifically
16 referring to Delphi Corporation or the
17 operating entities?

18 MR. HOGAN: I keep saying Delphi
19 Corporation.

20 MR. FOX: I want to be sure, because
21 that gets misunderstood a lot.

22 MR. HOGAN: If you listen, that's what
23 my questions are saying.

24 MR. FOX: Okay. You can answer if you
25 can.

65

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2 A. I do not know.

3 Q. If you can take a look at page S-20 of
4 Exhibit 4.

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5 A. S-20?

6 Q. Yes.

7 Do you understand in general that part
8 of Wilmington's objection relates to the granting
9 of certain claims to General Motors for General
10 Motors agreeing to assume certain pension and post
11 retirement benefits?

12 A. Yes.

13 Q. And I take it it's your position that
14 Delphi Corporation won't receive any concrete
15 benefit from General Motors agree to go assume
16 certain pension and post retirement benefit
17 obligations. Is that right?

18 MR. FOX: I'm going to object, but you
19 can answer.

20 Q. Do you have the question in mind?

21 A. No. None that was demonstrated to me,
22 no.

23 Q. Now taking a look at page S-20 of
24 Exhibit 4, about a third of the way down, in all
25 capital letters, there's a heading that says, our

66

1 Cimalore - rough draft
2 other post retirement employee benefits in
3 underfunded pension obligation. You see that?

4 A. Yes.

5 Q. And then the first sentence of that
6 reads in connection with our separation from
7 General Motors, we have entered into several
8 agreements relating to pensions and other post
9 retirement employee benefits for our employees, as
10 well as certain employees associated with prior

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11 divestitures.

12 Do you see that?

13 A. Yes.

14 Q. And so, in -- in reaching your
15 conclusion that Delphi Corporation won't receive
16 any concrete benefits from the attrition plan, did
17 you consider any agreements that Delphi
18 Corporation had entered into, relating to pensions
19 and other post retirement employee benefits?

20 MR. FOX: I'm going to object.

21 Q. Did Wilmington consider?

22 MR. FOX: You can answer.

23 A. I haven't seen any agreement.

24 MR. FOX: And by the way, we have the --
25 you produced some of the agreements and they

67

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2 were produced as highly confidential, so he's
3 not able to see them.

4 Q. My question wasn't related to
5 rereviewing the agreements. My question was, did
6 you consider any agreements that Delphi
7 Corporation had entered into relating to pensions
8 and other post retirement employee benefits?

9 MR. FOX: How can he consider the
10 agreement, Al if you won't let him see them?

11 MR. HOGAN: He can take a look at page S
12 20 of the offering document and realize that
13 Delphi Corporation said that it entered into
14 agreement regarding pension and other post
15 retirement pro benefits.

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16 MR. FOX: Yeah, but you can't look at
17 the agreements themselves and see what they
18 are say.
19 MR. HOGAN: I don't want to argue.
20 MR. FOX: Listen, I appreciate the fact
21 that you want to ask the question, but let's
22 not play a game of gotcha where you're asking
23 him about a description of documents, you
24 produced the documents but won't let him see
25 them, and then you want to help point out to

68

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2 the court, apparently, that you know, he
3 didn't consider that. Well, you know what?
4 Wilmington Trust through its counsel sure
5 did, and we'll be prepared to go true that
6 with the court if you want to, to the extent
7 it's all relevant. But it's inappropriate,
8 in my view, to bring a witness here and then
9 ask him whether he's considered things based
10 on document us that won't let him look at,
11 and we're not going to continue down this
12 path.

13 MR. HOGAN: I'm not asking about
14 documents that he hasn't looked at.

15 MR. FOX: Yes, you are, because that is
16 description of documents that he contact see.

17 MR. HOGAN: It's a statement that's
18 publishly disclosed. And my question is --

19 MR. FOX: Well if you want to ask him if
20 he considered the statement, you can ask him
21 that.

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22 MR. HOGAN: Sure.
23 MR. FOX: But you want to ask him about
24 the underlying substance without letting him
25 see the documents.

69

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2 MR. HOGAN: I didn't ask him any
3 questions, so let's agree to disagree with
4 what my prior question was.
5 Q. In terms of authorizing the objection
6 and the statement about no concrete benefits to
7 Delphi Corporation, did Wilmington consider
8 whether or not Delphi would benefit in terms of
9 relieving obligations under agreements that it
10 might have entered into, relating to pensions and
11 other post retirement employee benefits?
12 MR. FOX: I'm going to object, and have
13 you clarify. When you say Wilmington, are
14 you including its counsel?
15 MR. HOGAN: If I want to do that at any
16 time during this deposition, I can make it
17 explicit.
18 MR. FOX: Is so, when you say
19 Wilmington, you mean independent of its
20 counsel.
21 MR. HOGAN: I mean Wilmington Trust.
22 That's right.
23 A. No.
24 Q. Other than discussions with counsel,
25 have you engaged in any discussions with anyone

70

062806.txt

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2 about the agreements relating to pensions and
3 other post retirement pro benefits, that Delphi
4 Corporation might be a party to?

5 A. No.

6 (Discussion off the record.)

7 Q. Can we go to what's been marked as
8 Exhibit 7 to your deposition.

9 Again, not a trick question. I think
10 you answered previously, that you have not
11 reviewed form 10 Ks for Delphi Corporation prior
12 to the filing of the bankruptcy, and this appears
13 to be such a document, but looking at Exhibit 7,
14 does that refresh you at all that you might have
15 seen this before?

16 A. I have not.

17 Q. Taking a look at page 17 of Exhibit 7,
18 there is -- halfway down the page, there is
19 something that's titled employees -- union
20 representation. You see that?

21 A. Yes.

22 Q. Take a look at that paragraph, and then
23 the chart below that. Let me know when you've
24 looked at that.

25 A. Okay.

71

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2 Q. In that paragraph, you see that Delphi
3 Corporation is disclosing that as of December 31,
4 2000 --

5 MR. FOX: Objection.

6 Q. Exclude --

062806.txt

7 MR. HOGAN: I'm not done with my
8 question.
9 MR. FOX: Your question does not
10 necessarily accurately reflect what the
11 document says.
12 MR. HOGAN: And I appreciate it's your
13 objection. Let me finish my question.
14 MR. FOX: Well, why don't you correct
15 your question.
16 MR. HOGAN: I'll ask it, and they be --
17 I know what objection you're going to make,
18 and you can make T and then we'll go from
19 there.
20 MR. FOX: I'm not sure do you.
21 MR. HOGAN: I'm pretty sure I do.
22 MR. FOX: Okay.
23 Q. The -- page 17, the paragraph that I
24 directed to you, Delphi Corporation discloses in
25 its 10 K that as of December 31, 2000, excluding

72

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2 all joint ventures and other venture, we employed
3 approximately 211,000 people, of which
4 approximately 38,000 were salaried employees, and
5 approximately 173,000 were hourly employees.
6 Do you see that sentence?
7 A. Yes.
8 Q. In the next sentence goes on discuss the
9 composition of those hourly employees, in terms of
10 their respective unions. You see that?
11 A. Yes.

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12 Q. Now, in terms of the statement in the
13 objection, that Delphi Corporation will not
14 receive any concrete benefit from a restructuring
15 of its labor costs, did Wilmington consider the
16 fact that Delphi Corporation has a significant
17 union work force?

18 MR. FOX: I'm sorry. Wait a minute.

19 Q. And again, that's irrespective of your
20 counsel. I'm saying did Wilmington.

21 MR. FOX: Wait a minute. That question
22 is all over the line. First of all, let's
23 decide whether we're asking a question based
24 on the document or whether you're just asking
25 him the question without reference to the

73

1 Cimalore - rough draft
2 document. And if you're asking with respect
3 to the document, then this document is based
4 on a -- is -- all these statements are on a
5 consolidated basis. And then you're trying
6 ask him about Delphi Corporation. The
7 individual entity presumably. You know, come
8 on, you can't -- you can't play that.
9 Doesn't work.

10 MR. HOGAN: Uh-huh.

11 MR. FOX: We're not going to do that.

12 Q. My question is, in looking at the
13 motion, the objection -- strike that.

14 In looking at the objection, the
15 statement that there's -- that Delphi Corporation
16 won't receive any concrete benefit from the
17 restructuring of labor costs, did Wilmington

062806.txt

18 consider one way or the other whether or not
19 Delphi Corporation employed a significant union
20 labor force?

21 MR. FOX: Objection. Lack of
22 foundation.

23 Q. Did you consider it one way or the
24 other?

25 MR. FOX: If you understand, you can

74

1 Cimalore - rough draft

2 answer. You can try to answer.

3 A. Sure.

4 Q. How did you consider it?

5 A. Other than, you know, based on my
6 discussions with counsel, and what we've put in
7 our objection, I don't have anything else to add
8 to that.

9 DIR Q. Do you think a reasonably prudent
10 investor would believe that there's a concrete
11 benefit to Delphi Corporation for restructuring
12 its labor costs? To Delphi Corporation.

13 MR. FOX: I'm going to object. That's
14 outside the scope of this examination. The
15 witness is not going to answer that question.

16 DIR Q. Do you know one way or the other?

17 MR. FOX: That -- the witness isn't
18 going to answer the question.

19 Q. In terms of authorizing the filing of
20 the objection -- strike that.

21 A little bit of foundation. Having read
22 the motion, you understand at least it's the

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23 debtor's position that the UAW supplement and the
24 IUE-CWA special attrition plan will benefit the
25 debtor's estate, correct? You understand that's

75

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2 their position. I'm not asking if you agree with
3 it.

4 A. Yes.

5 Q. In terms of Wilmington's decision to
6 agree to file -- with the filing of the objection
7 to the motion, other than discussions with
8 counsel, did you do anything to assess what the
9 benefits to the estates and Delphi Corporation in
10 particular might be, if the attrition plans were
11 approved?

12 A. Repeat that one more time.

13 Q. Yeah. In terms of Wilmington's decision
14 to file the objection to the motion, other than
15 discussions with counsel, did you do anything to
16 assess what the benefits to Delphi Corporation
17 might be, if the attrition plans were approved?

18 A. No.

19 Q. Same question in terms of the decision
20 to file objection other than discussions with
21 counsel, did you do anything to assess what the
22 cost to Delphi Corporation might be, if the
23 attrition plans were not approved?

24 A. No.

25 Q. Other than discussions with counsel,

76

1 Cimalore - rough draft

2 have you had any conversations with anyone about

062806.txt

3 the risks to Delphi Corporation if the attrition
4 plans aren't approved?

5 A. No.

6 MR. HOGAN: Let's take two minutes, we
7 might be done.

8 (A recess was taken.)

9 (description was marked
10 Cimalore Exhibit 8 for identification, as of
11 this date.)

12 Q. Showing you what's been marked as
13 Exhibit 8 to your deposition, can you tell me what
14 that is?

15 A. It's the instrument of resignation,
16 appointment and acceptance.

17 Q. Is there a -- is there any other
18 document or agreement that you're aware of that
19 exists between Delphi Corporation and Wilmington
20 Trust company?

21 A. No.

22 DIR Q. Is there -- is there a steering
23 committee -- is there a steering committee of
24 securities holders, that you've worked with in
25 terms of managing this account?

77

1 Cimalore - rough draft

2 MR. FOX: Objection. It's outside the
3 scope of the examination as limited by the
4 court. Not going to answer that.

5 DIR Q. In terms of -- in terms of the -- the
6 various objections that Wilmington Trust has filed
7 in this case, just some foundation questions.

062806.txt

8 Can you tell me yes or no, have you been
9 the person that's approved the filing of all of
10 the previous objections?

11 MR. FOX: I'm going to object, instruct
12 the witness not to answer. It's outside the
13 scope of this deposition, as instructed by
14 the court.

15 Q. Here is my point. I'm the not trying to
16 hide anything am I'm trying to get it the facts
17 that we've been talking about this objection.
18 Some of the factual assertions are recitation of
19 themes that we've seen previously. I'm just
20 trying to get at if there's anything that's
21 happened previously in terms of learning facts
22 from other parties other than counsel that I need
23 to explore?

24 MR. FOX: Why don't you ask him if that
25 fashion, okay?

78

1 Cimalore - rough draft

2 MR. HOGAN: That's what what I was
3 trying to do.

4 Q. So let me ask this question. In terms
5 of the filing of any other objection by Wilmington
6 Trust in this case --

7 Have you had conversations with parties
8 other than counsel?

9 MR. FOX: I'm going to object. And
10 instruct the witness not to answer. It's
11 outside it's scope. And it's -- it's outside
12 the scope of this exam.

13 DIR Q. As a yes-or-no proposition, can you tell

062806.txt

14 me if you've had discussions with anyone?

15 MR. FOX: I'm going to object and
16 instruct the witness not to answer. It's
17 outside the scope of this examination.

18 DIR Q. Have you been the person who as approved
19 the filing of Wilmington Trust's prior objections?

20 MR. FOX: Objection go object, and
21 instruct the witness not it answer. It's
22 outside the scope of this examination as
23 limbed by the court.

24 MR. HOGAN: It's absolutely not. It's
25 not outside the scope, it's not a harmful

79

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2 question in any respect, I'm trying to get at
3 the foundation of this questions as built up
4 over time (tape).

5 DIR Q. Let me ask a few foundational questions,
6 and it's answer may be obvious. So let me try
7 again.

8 Are you the person that has authorized
9 the filing of the previous objections on behalf of
10 Wilmington Trust in this case?

11 MR. FOX: Objection. Instruct the
12 witness not to answer. It's outside the
13 scope of this exam as limited by the court.

14 Q. Are any of the facts that you're relying
15 on in the current objection derived from your
16 prior analysis or consideration of any other
17 filing on behalf of Wilmington Trust in this case?

18 A. Off the top of my head, I don't know. I

062806.txt

19 don't have the other objections here.

20 Q. In terms of assessing the -- the
21 assertions in the motions -- I'm sorry, in terms
22 of assessing the motions made in the objection,
23 did you rely on any discussions you had had with
24 parties other than your counsel, at any time?

25 MR. FOX: Could you just read that back?

80

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2 MR. HOGAN: Yeah.

3 MR. FOX: Just as you said. Just --

4 Q. In terms of assessing the assertions in
5 the objection we're been discussing today, did you
6 rely on any discussions you had with parties other
7 than your counsel, at any time?

8 A. Including committee?

9 Q. Yeah.

10 A. No.

11 Q. In terms of the final decision as to
12 whether or not to file the objection, did you rely
13 on discussions that you had with any parties other
14 than your counsel, at any time?

15 MR. FOX: I'm going to object. That's
16 outside it's scope of the direct as limited
17 by court.

18 MR. HOGAN: It's really not, and if the
19 answer is no, we know what the answer is.

20 I --

21 MR. FOX: It's outside the scope.

22 MR. HOGAN: Why don't you confer with
23 your client, see if the answer is no --

24 MR. FOX: I think I know what the answer

062806.txt

25 is going to be, it's still outside the scope.

81

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2 MR. HOGAN: If the answer, as I suspect
3 is, no, we're eliminating a potential fight
4 when we don't have to have it.

5 MR. FOX: No, it just gives your partner
6 another, you know, something else to say.

7 Q. Okay, well, then, let me ask this
8 question, then, I tell you, if you're not --
9 you're going to follow your counsel's instruction,
10 to not provide the answer, to the question, that
11 I'm about to read. In terms of the final decision
12 as to whether or not to file this objection, did
13 you rely on discussions that you had with any
14 parties other than your counsel, at any time?

15 MR. FOX: If you limit it to factual
16 matters, then he can answer.

17 MR. HOGAN: I'm not going to limit it to
18 factual matters.

19 MR. FOX: You can answer as to factual
20 matters.

21 MR. HOGAN: I'm not so limiting my
22 question.

23 MR. FOX: That's okay. But I'm limiting
24 how he can answer.

25 A. As to factual matters, no.

82

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2 Q. Okay.

3 MR. HOGAN: I'm done. Thanks. Anybody

062806.txt

4 else?
5 Thank you.
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